IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13235 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHOK MAGANBHAI CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13235 of 2004
MS BANNA DATTA FOR MR AR SHAIKH for Petitioner No. 1
MR LR POOJARI AGP for Respondent No. 1-3
RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 24/11/2004

ORAL JUDGEMENT

By filing this petition under Article 226 of the Constitution of India read with Articles 21 and 22 (b) of the Constitution of India, the petitioner has challenged the legality and validity of the order of detention dated 27.4.2004 passed by the Police Commissioner, City of Rajkot and Detaining Authority under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "The PASA Act" for short), whereby, the Detaining Authority has branded the present petitioner as "Dangerous Person" within the meaning of Section 2 (c) of the PASA Act. At present the present petitioner has been detained at Central Prison, Ahmedabad.

2. It is alleged that the order passed by the Detaining Authority is arbitrary, illegal and suffers from non application of mind. The grounds of assailing the order of detention are mentioned in para 5 (1) to 5 (23). Ms. Banna Datta, learned Counsel appearing for Mr. Shaikh for the petitioner has concentrated her arguments while assailing the order of detention on two main grounds. She has pointed out that as per the grounds of detention conveyed to the detenue, the petitioner was found involved in three different patty offences of theft punishable under Sections 379 read with Section 114 of the IPC and Sections 457, 380 read with Section 114 of the IPC. The first ground placed by Ms. Datta before the Court is on the ground of parity, the order of detention is required to be quashed and set aside as the order passed against co-detenue and co-accused has been quashed and set aside and they have been set at liberty by allowing their Special Civil Applications filed by them on merits. The second ground, which is the back born of the case urged before the court is that the petitioner has been wrongly branded as dangerous person and none of the offences registered against him can be said to be adverse to the public order. Looking to the offences committed by the present petitioner, at the most it can be said that the present petitioner has committed some wrong prejudicial to maintenance of law and order but it cannot be said that because of such offence, petitioner has acted against maintenance of public order. She has rightly pointed out that the date of arrest mentioned in the grounds of detention i.e. in para 2 page 34 of Annexure - C, it is clear that petitioner was arrested on 10.4.2004 for all the three offences and two of these offences are on account of theft committed by petitioner of Car Tapes (audio tape recorder).

3. Looking to the grounds of detention, the Court is

of the view that the Detaining Authority has not exercised rightly the powers vested with it under Sub-Section 2 of Section 9 of the PASA Act. It is not necessary to quote the observations of the Apex Court as in "N" number of decisions, the Apex Court as well as by this court has held that such cases may not fall in the category of cases, whereby, a person can be said to be "a person dangerous" within the meaning of Section 2 (c) of the PASA Act.

4. For the reasons aforesaid, without entering into the merits of the other grounds agitated by the petitioner challenging the order of detention, the Court is inclined to quash and set aside the order of detention dated 27.4.2004 passed by the Police Commissioner, Rajkot City having No. PCB/DTN/PASA/28/2004. Accordingly, this petition is allowed. The order of detention dated 27.4.2004 passed by the Police Commissioner, Rajkot City is hereby quashed and set aside. The detenue is ordered to be set at liberty forthwith, if not required to be detained in connection with any other case. Rule is made absolute. Direct Service permitted.

(C.K. Buch, J.)

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